

Message Text

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ACTION SCSE-00

INFO OCT-01 ARA-10 ISO-00 SCA-01 DHA-02 H-02 L-03 JUSE-00

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FM AMEMBASSY MEXICO

TO SECSTATE WASHDC 6445

INFO ALL CONSULATES IN MEXICO BY POUCH

UNCLAS MEXICO 9689

E.O. 11652: N/A

TAGS: CASC, MX

SUBJ: W/W: ARRESTS: PROBLEM OF NOTIFICATION AND ACCESS

REF: MEXICO 4079

1. ACTING CONSUL GENERAL AND CCS CHIEF DANIELS CALLED UPON DEPUTY ATTORNEY GENERAL ALBA LEYVA JULY 28 TO DISCUSS CONTINUING PROBLEM OF OBTAINING PROMPT NOTIFICATION OF ARREST AND CONSULAR ACCESS IN CASES INVOLVING DETENTION OF AMERICAN CITIZENS. ALBA LEYVA WAS WELL-PREPARED FOR DISCUSSION, HAVING AT HAND BOTH EMBASSY'S MOST RECENT PROTEST NOTE (JULY 16) AND RECORD OF ACTIONS ATTORNEY GENERAL'S OFFICE HAS TAKEN ON THIS PROBLEM IN THE PAST FEW MONTHS.

2. ALBA LEYVA HAD FOLLOWED UP PREVIOUS DISCUSSION OF NOTIFICATION PROBLEM WITH CONSUL GENERAL SMITH MARCH 30, BY LOOKING INTO EVERY CASE ON A LIST SUBMITTED BY EMBASSY. HE READ TO EMBOFFS FROM A SUMMARY REPORT COVERING RESPONSES TO INQUIRY FROM AG'S OFFICE FROM AGENTES DEL MINISTERIO PUBLICO IN THE VARIOUS STATES. IN MOST CASES, AGENTES DEL MINISTERIO PUBLICO REPORTED THAT THEY WERE AWARE OF ATTORNEY GENERAL'S CIRCULAR INSTRUCTION OF SEPTEMBER 23, 1975, REGARDING NOTIFICATION, AND THAT THEY HAD IDENTIFIED BY NAME CONSULAR OFFICER OF LOCAL EMPLOYEE OF CONSULATE WHO WAS TO BE UNCLASSIFIED

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NOTIFIED BY TELEPHONE OF ARREST CASES. HOWEVER, IN

A NUMBER OF THE CASES INVESTIGATED, DELAY IN NOTIFICATION ALLEGEDLY OCCURRED BECAUSE OF LAPSE OF SEVERAL DAYS BETWEEN TIME OF ORIGINAL ARREST AND TIME PRISONER TURNED OVER TO AGENTE DEL MINISTERIO PUBLICO.

3. ALBA LEYVA DISCUSSED FRANKLY PROBLEM OF OBTAINING COOPERATION IN NOTIFYING CONSULAR OFFICER WHEN ARRESTING AUTHORITIES WERE UNDER STATE OR LOCAL JURISDICTION, RATHER THAN FEDERAL, OR WHEN ARREST MADE BY IMMIGRATION OR CUSTOMS AUTHORITIES, WHO ARE UNDER OTHER DEPARTMENTS OF FEDERAL GOVERNMENT. HOWEVER, HE STATED FIRMLY THAT HE WAS NOT ATTEMPTING TO DENY THE RESPONSIBILITY OF GOM TO ENSURE COMPLIANCE WITH THE VIENNA CONVENTION AND BILATERAL CONSULAR CONVENTION, ONLY POINTING OUT THE DIFFICULTIES INVOLVED. HE THEN SHOWED EMBOFFS COPIES OF LETTERS DATED APRIL 12, 1976 FROM ATTORNEY GENERAL TO MINISTERS OF GOVERNMENT AND FINANCE, POINTING OUT GOM RESPONSIBILITY TO NOTIFY CONSULAR OFFICERS IN ARREST CASES INVOLVING FOREIGN NATIONALS, AND REQUESTING COOPERATION OF THOSE DEPARTMENTS IN ENSURING COMPLIANCE BY IMMIGRATION AND CUSTOMS OFFICIALS. HE OFFERED TO SEND SIMILAR LETTERS TO GOVERNORS OF ALL STATES. ACG THANKED HIM FOR HIS OFFER, AND SAID THAT EMBASSY WOULD ALSO BE INSTRUCTING CONSULAR OFFICERS TO CALL ON GOVERNORS AND LOCAL OFFICIALS, TO DISCUSS PROBLEMS OF NOTIFICATION AND ACCESS, WHERE THESE EXISTED, AND TO BE SURE THEY WERE AWARE OF THEIR RESPONSIBILITY. ALBA LEYVA PROVIDED A COPY OF AG'S CIRCULAR INSTRUCTION OF SEPTEMBER 23 TO USE IN SUCH CALLS.

4. ALBA LEYVA PROMISED TO INVESTIGATE EVERY SPECIFIC CASE OF NON-NOTIFICATION OR DENIAL OF ACCESS REPORTED TO HIM BY EMBASSY, AND, WHERE INVESTIGATION SHOWED DELINQUENCY ON PART OF A FEDERAL OFFICIAL, TO TAKE APPROPRIATE DISCIPLINARY ACTION. AT SUGGESTION OF ACG, HE READILY AGREED THAT MORE FREQUENT AND REGULAR MEETINGS TO DISCUSS THIS AND OTHER ASPECTS OF PRISONER PROBLEM WOULD BE USEFUL.

5. COMMENT: IN MARCH 30 MEETING ALBA LEYVA
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WAS POSITIVE AND FORTHCOMING, IN MARKED CONTRAST TO OUR PREVIOUS EXPERIENCE WITH HIM. JULY 28 MEETING PRODUCED FOR THE FIRST TIME EVIDENCE THAT HE IS ACTIVELY FOLLOWING UP ON THIS PROBLEM AND ATTEMPTING TO POLICE ATTORNEY GENERAL'S INSTRUCTIONS. WE WOULD CAUTION DEPARTMENT, HOWEVER, THAT THERE ARE STILL LOOPHOLES WITHIN THE SYSTEM THAT ARE LIKELY TO CONTINUE TO PREVENT TIMELY NOTIFICATION AND ACCESS - I.E. NOTIFICATION AND ACCESS

WITHIN INITIAL INTERROGATION PERIOD - IN MOST CASES.
ONE LARGE LOOPHOLE IS PROBLEM OF MULTIPLE STATE, LOCAL,
FEDERAL, AND DEPARTMENTAL JURISDICTIONS MENTIONED BY
ALBA LEYVA. ANOTHER PROBLEM IS THAT AG'S OFFICE
IS DEALING THROUGH AGENTES DEL MINISTERIO PUBLICO,
PLACING UPON THEM THE BURDEN OF NOTIFICATION. THIS
PERMITS A LAPSE OF FROM ONE TO SEVERAL DAYS BETWEEN TIME
OF ACTUAL DETENTION AND THAT OF "PROMPT" NOTIFICATION BY
AGENTE WHEN CASE IS TURNED OVER TO HIM. THIS IS AN AREA
WE PROPOSE TO EXPLORE IN FUTURE DISCUSSIONS WITH ALBA
LEYVA, FOLLOWING RESTUDY OF PERTINENT MEXICAN LAWS.
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